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In re Application of SCHOLL et al  
U.S. Application No.: 09/937,998  
Int. Application No.: PCT/EP00/02452  
Int. Filing Date: 20 March 2000  
Priority Date: 01 April 1999  
Attorney Docket No.: Mo-6634/LeA 33,620  
For: RUBBER COMPOSITIONS CONTAINING  
HYDROXYL GROUPS

DECISION

This is in response to applicant's letter filed 25 February 2002, which is accompanied by a copy of a declaration purportedly filed on 23 January 2002. The submission is being treated as a petition to accord the copy of the declaration an original filing date of 23 January 2002 and as a request for status under 37 CFR 1.42. No petition fee is due.

**BACKGROUND**

On 20 March 2000, applicant filed international application PCT/EP00/02452, which claimed priority of an earlier Germany application filed 01 April 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 12 October 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 October 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 October 2001.

On 27 September 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 07 November 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371, which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 25 February 2002, applicant filed the present petition. The petition states that it is accompanied by a copy of a return postcard receipt.

## DISCUSSION

### I. Filing date of declaration.

The evidence of record is sufficient to establish that the declaration was originally filed on 23 January 2002. Specifically, the copy of the return postcard, which includes an "Combined Declaration and Power of Attorney" in its itemized contents and which bears a USPTO date stamp of 23 January 2002, serves as *prima facie* evidence that the declaration was received by the USPTO on 23 January 2002.

### II. Request for status under 37 CFR 1.42

The declaration filed 23 January 2002 is executed by inventor Jurgen Trimbach and by an heir of Thomas Scholl, who according to the declaration is deceased.

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

In the present case, the declaration is signed by one of the heirs, Ulrike Scholl, on behalf of all of the other heirs, Philipp Scholl, Christine Scholl, and Johannes Scholl, who are minor children. The submission of the declaration executed by the heirs of the deceased inventor is hereby construed as an indication that no legal representative of the deceased's estate has been appointed and that no legal representative is required by the applicable law to be appointed. If this interpretation is incorrect applicant is required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to this decision.

## CONCLUSION

For the reasons set forth in §I above, the petition is GRANTED.

For the reasons set forth in §II above, the papers filed 23 January 2002 are ACCEPTED under 37 CFR 1.42.

The application has an International Filing Date of 20 March 2000 and a date under 35 U.S.C. 371 of 23 January 2002.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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